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Probate reforms now law

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Hampshire Registrar of Probate David E. Sullivan served on a bar association panel that helped draft the new legislation.

After nearly two decades of advocacy, supporters of probate reforms are rejoicing after Gov. Deval Patrick signed into law this month sweeping changes in how the state handles matters in probate court, including guardianships, trusts and estates.

"The practice of probate law is complicated, even to experts," said Martin W. Healy, general counsel and acting executive director of the Massachusetts Bar Association. "This legislation demystifies and cleans up existing ambiguities dating back hundreds of years."

Hampshire Registrar of Probate David E. Sullivan said the reforms will make the probate courts more accessible and "user-friendly." Sullivan, who served on a joint committee of the MBA and Boston Bar Association, helped draft the new legislation.

"We wanted it to meet the needs of attorneys, litigants and the public," Sullivan said. "I think the time was right to make some reforms. When you look at the fiscal times as tough as they are, why not make some reforms where they are needed."

What has changed

The new laws repeal and codify existing statutes on estates and trusts, with most going into effect in July 2011.

The reforms provide added protections for those under guardianships as well as the beneficiaries of trusts. They are

designed to improve the administration of probate matters for judges and court workers, eliminate some court and legal fees and reduce delays.

Beginning in July this year, the reforms mandate courts to monitor guardianships of people determined to be incapacitated and require those guardians to issue annual reports. These changes seek to provide stronger oversight of guardianships.

"In the past, there haven't really been sufficient protections for people whose property can be taken away from them," said Raymond H. Young, an estate and trust lawyer in Boston who worked on the reforms.

Other changes include reducing the length of time it takes to appoint an estate administrator to about seven days. In the case of Hampshire County Probate and Family Court, that wait can sometimes take two months; it's even longer in other parts of the state.

Sullivan said eliminating the delays in estate matters will help families take care of pressing matters, like funeral costs or paying bills after a death.

The reforms depart from viewing estate matters as an adversarial action from the outset, which can prompt long and costly court procedures. Instead, they make room for more informal procedures that would reduce expenses and delays.

"That's an enormous improvement," Young said, noting that most families are in early agreement on estate matters. "The idea is that the full court protection is available when needed and wanted and not just thrust upon those who don't need it."

"Right now, clients get mad at lawyers," he added. "Why are they so incompetent and can't get this done faster?"

In the case of no will, spouses will get the entire estate if children are all of the same marriage. In addition, trustees will be required to notify beneficiaries of accounts or financial transactions as well as acceptance of appointment as trustees, according to the new laws.

"People need to be kept abreast as to how that trustee is managing that money," said Sean M. Dunphy, former chief justice of the state's probate and family courts.

Dunphy, of Northampton, retired last year, but helped draft the legislation while serving on a committee of judges.

"I think it overwhelmed the Legislature when it was initially filed," said Dunphy when asked why the reforms took some 15 years to materialize.

John G. Dugan, of the MBA's probate law section, said the reforms will do far more than benefit consumers. "They will also modernize the law."